

TITLE 760 DEPARTMENT OF INSURANCE

Final Rule LSA Document #10-245(F)

DIGEST

Amends 760 IAC 1-21-2 regarding definitions. Amends 760 IAC 1-21-2.5 regarding use of an insurance policy as proof of financial responsibility. Amends 760 IAC 1-21-3 regarding use of means other than insurance for establishing proof of financial responsibility. Amends 760 IAC 1-21-4 regarding retention of deposit during liability. Amends 760 IAC 1-21-5 regarding financial responsibility of hospitals and psychiatric hospitals. Amends 760 IAC 1-21-8 regarding surcharge payments and amounts. Amends 760 IAC 1-21-8.5 regarding calculation of surcharge for nursing homes. Amends 760 IAC 1-21-10 regarding scope of insurance coverage. Effective 30 days after filing with the Publisher.

760 IAC 1-21-2; 760 IAC 1-21-2.5; 760 IAC 1-21-3; 760 IAC 1-21-4; 760 IAC 1-21-5; 760 IAC 1-21-8; 760 IAC 1-21-8.5; 760 IAC 1-21-10

SECTION 1. 760 IAC 1-21-2 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-21-2 Definitions

Authority: IC 34-18-5-4

Affected: IC 12-15-18-3; IC 12-24-1-1; IC 12-24-1-3; IC 12-25; IC 16-28; IC 25-14-1-3; IC 25-22.5; IC 25-29-1-13; IC 34-18-2-14; IC 34-18-3-2; IC 34-18-17

Sec. 2. The following definitions and those contained in IC 34-18-2 apply throughout this rule:

(1) "Ancillary provider" means all health care providers as defined in IC 34-18-2-14, except **the following:**

- (A) Physicians.
- (B) Nursing homes. ~~and~~
- (C) Hospitals.
- (D) Psychiatric hospitals.**

~~(2) "Certificate of coverage" means the form prescribed by the department to show proof of financial responsibility as required by IC 34-18-3-2(1) to become a qualified provider.~~

~~(3)~~ (2) "Claims made coverage" means coverage for claims made during a coverage period.

~~(4)~~ (3) "Comprehensive nursing care" means nursing that includes, but is not limited to, any of the following:

- (A) Intravenous feedings.
- (B) Enteral feeding.
- (C) Nasopharyngeal and tracheostomy aspiration.
- (D) Application of dressings to wounds that:
 - (i) require the use of sterile techniques, packing, or irrigation; or
 - (ii) are infected or otherwise complicated.
- (E) Treatment of Stages 2, 3, and 4 pressure ulcers or other widespread skin disorders.
- (F) Heat treatments that:
 - (i) have been specifically ordered by a physician as part of active treatment; and
 - (ii) require observation by nurses to adequately evaluate the process.
- (G) Initial phases of a regimen involving administration of medical gases.

(4) "Dentist" means any person with a license to practice dentistry under IC 25-14-1-3 not meeting the definition for dentist - oral surgery set forth in subdivision (5).

(5) "Dentist - oral surgery" means any person with a license to practice dentistry under IC 25-14-1-3 treating patients with general anesthesia as defined by IC 25-14-1-1.5 in an office setting.

~~(5)~~ (6) "Department" means the Indiana department of insurance.

~~(6)~~ (7) "Employed physician" means a physician for whom an employer:

- (A) withholds and pays Social Security and Medicare taxes; and
- (B) pays unemployment tax;

on wages paid to the physician. The term does not include a physician that is treated as an independent contractor for purposes of the Internal Revenue Service.

~~(7)~~ (8) "Independent ancillary provider" means an ancillary provider that holds a state-issued license to provide health

care and ~~does not require direct supervision or direction in providing~~ **functions in an advanced role at a specialized level through the application of advanced knowledge and skills in the provision of health care.** The term includes, but is not limited to, the following:

- (A) A dentist.
- (B) A psychologist.
- (C) A podiatrist.
- (D) An optometrist.
- (E) A nurse practitioner.
- (F) A nurse midwife.
- (G) A certified registered nurse anesthetist.
- (H) A physician assistant.**
- (I) A clinical nurse specialist.**

~~(8)~~ **(9) "Insurer"** means any entity that issues a policy of insurance used as proof of financial responsibility under IC 34-18 including, but not limited to, an insurance company doing business on an admitted or nonadmitted basis or a risk retention group.

~~(9)~~ **(10) "IRMIA"** means the Indiana residual malpractice insurance authority created by IC 34-18-17.

(11) "Medical director" means a licensed physician whose duties primarily relate to oversight of the following:

- (A) Program policies and procedures.**
- (B) Program development.**
- (C) Improvement of quality of care.**
- (D) Compliance.**
- (E) Supervision.**

(12) "Nurse midwife" means a certified nurse midwife as defined at 848 IAC 3-1-1.

~~(10)~~ **(13) "Nursing home"** means a facility named on the license issued by the state department of health under IC 16-28.

~~(11)~~ **(14) "Occurrence coverage"** means coverage for acts that occur during a coverage period.

~~(12)~~ **(15) "PCF"** means the Indiana Patient's Compensation Fund.

(16) "PCF certificate of insurance" means the form prescribed by the department to show proof of financial responsibility as required by IC 34-18-3-2(1) to become a qualified provider.

~~(13)~~ **(17) "Physician"** means an individual with an unlimited license to practice medicine under IC 25-22.5.

(18) "Podiatrist – no surgery" means any podiatrist, as defined by IC 25-29-1-13, not meeting the definition for podiatrist – surgery set forth in subdivision (19).

(19) "Podiatrist – surgery" means a podiatrist, as defined by IC 25-29-1-13, performing any procedure requiring an anesthetic, including a local anesthetic as defined by 845 IAC 1-1-1 or intravenous or gaseous sedation, including postoperative treatment. Exceptions to these procedures include the following:

- (A) Diagnostic and therapeutic injections.**
- (B) Surgical procedures involving the nails.**
- (C) Excision of skin lesions.**
- (D) Incision and drainage of abscesses.**
- (E) The treatment of ulcers.**

The term includes podiatric physicians assisting in surgery.

(20) "Psychiatric hospital" means an inpatient facility that is a private institution licensed under IC 12-25 and public institutions under the administrative control of the director of a division as designated by IC 12-24-1-1 or IC 12-24-1-3 and includes a private mental health institution, as defined by 440 IAC 1.5-1-8, and a private psychiatric institution, as defined by IC 12-15-18-3.

~~(14)~~ **(21) "Qualified actuary"** means an individual that is a member in good standing with the Casualty Actuarial Society of the American Academy of Actuaries who has been approved as qualified for signing casualty loss reserve opinion by the Casualty Practice Council of the American Academy of Actuaries.

(22) "Reporting endorsement" means coverage that extends the time a claim may be made beyond the final claims made policy period. A reporting endorsement is commonly referred to as tail coverage.

~~(15)~~ **(23) "Residential nursing care"** means nursing that includes, but is not limited to, any of the following:

- (A) Identifying human responses to actual or potential health conditions.
- (B) Deriving a nursing diagnosis.
- (C) Executing a minor regimen based on a nursing diagnosis or executing minor regimens as prescribed by any of the following:
 - (i) A physician.

- (ii) A physician assistant.
- (iii) A chiropractor.
- (iv) A dentist.
- (v) An optometrist.
- (vi) A podiatrist.
- (vii) A nurse practitioner.
- (viii) A clinical nurse specialist.**

(Department of Insurance; Reg 22, Sec II; filed Jan 27, 1977, 2:35 p.m.: Rules and Regs. 1978, p. 514; filed Apr 29, 1999, 2:22 p.m.: 22 IR 2874; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531; filed Mar 18, 2005, 10:45 a.m.: 28 IR 2375; filed Feb 2, 2007, 3:08 p.m.: 20070228-IR-760060032FRA)

SECTION 2. 760 IAC 1-21-2.5 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-21-2.5 Insurance policy as proof of financial responsibility

Authority: IC 34-18-3-7; IC 34-18-5-2; IC 34-18-5-4; IC 34-18-6-6

Affected: IC 27-1; IC 27-4-5-2; IC 34-18-2-14; IC 13-18-3; IC 34-18-4; IC 34-18-15-4; IC 34-18-17

Sec. 2.5. (a) A health care provider may use a policy of insurance issued by any of the following types of insurer as proof of financial responsibility:

- (1) An insurance company holding a certificate of authority from the department under IC 27-1-6 or IC 27-1-17.
- (2) A risk retention group domiciled in Indiana or a foreign risk retention group registered with the department.
- (3) An insurer that does not hold a certificate of authority from the department through one (1) of the following:
 - (A) A surplus lines transaction under IC 27-1-15.8.
 - (B) An industrial insured transaction under IC 27-4-5-2(a)(8).

(b) The commissioner has the right to review the financial condition of any insurer used as proof of financial responsibility.

- (1) An insurer shall have adequate assets to cover the reserves associated with all potential liabilities that are neither fronted by, nor reinsured with, an insurer. The commissioner may require an insurer to increase the funding if it is determined that the insurer's financial condition poses a financial risk to the PCF.
- (2) The commissioner may disapprove the use of an insurer as proof of financial responsibility if the commissioner determines, after notice and an opportunity to be heard, the insurer's financial condition poses a financial risk to the PCF. A disapproval must be in writing and served upon the insurer. If the insurer uses an agent to file proof of financial responsibility, service on that agent shall be considered service on the insurer.

(c) Upon request of the commissioner, an insurer shall provide a copy of the policy form and premium rates used as proof of financial responsibility.

(d) Claims made coverage or occurrence coverage may be used as proof of financial responsibility. No other policy type of coverage may be used as proof of financial responsibility until the policy form is:

- (1) submitted to the medical malpractice division of the department; and
- (2) approved by the commissioner, in writing, specifically for use as proof of financial responsibility under IC 34-18-3 and IC 34-18-4.

(e) The health care provider's coverage with the PCF is of the same coverage type and scope as the policy used for proof of financial responsibility. However, the PCF will not allow retroactive coverage that begins before the date of issue of the first policy of insurance from any insurer used as proof of financial responsibility for the PCF.

(f) A health care provider who fails to purchase a reporting endorsement policy will not be allowed PCF coverage for any claim made after the termination date of the final claims made coverage used as proof of financial responsibility for the PCF, unless the underlying insurer considers the claim to be covered under its policy language because it was previously reported.

(g) In the event a policy of insurance is rescinded, the health care provider's status as a qualified health care provider is similarly rescinded. The department will refund any surcharge that was received for the period that was subject to the rescission. The insurer shall notify the department within ten (10) days of any policy that is rescinded.

~~(g)~~ (h) If an insurer is placed into insolvency or receivership and the department has not previously disapproved the insurer as acceptable for establishing financial responsibility under subsection (b), the following apply:

- (1) The health care provider remains a qualified health care provider.
- (2) The PCF is not responsible for any amounts due by the health care provider except as provided in IC 34-18-15-4.
- (3) The PCF does not assume the insurer's obligation to pay costs to defend a claim.

(Department of Insurance; 760 IAC 1-21-2.5; filed Feb 2, 2007, 3:08 p.m.: 20070228-IR-760060032FRA)

SECTION 3. 760 IAC 1-21-3 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-21-3 Establishment of financial responsibility by health care provider by means other than insurance

Authority: IC 34-18-5-4

Affected: IC 34-18-4-1

Sec. 3. (a) ~~An ancillary provider, independent ancillary~~ **A health care provider nursing home, or physician** desiring to establish financial responsibility under IC 34-18-4-1 by a means other than insurance may do so by submitting, to the commissioner, the following:

- (1) An agreement in writing, in a form and manner prescribed by the commissioner, to pay any final judgment or agreed settlement arising from claims of malpractice in accordance with the limits on liability set forth in IC 34-18-4-1(1).
- (2) Filing and maintaining with the commissioner cash or surety bonds from a company acceptable to the commissioner, in accordance with the limits on liability set forth in IC 34-18-4-1(1) for each year in which financial responsibility is established by a means other than insurance.

(b) ~~An ancillary provider, independent ancillary~~ **A health care provider nursing home, or physician** that establishes proof of financial responsibility under this section may obtain only occurrence coverage. Claims made coverage is not available.

(c) **This section does not apply to a hospital or psychiatric hospital establishing financial responsibility under IC 34-18-4-1(3).** (Department of Insurance; Reg 22, Sec III; filed Jan 27, 1977, 2:35 p.m.: Rules and Regs. 1978, p. 514; filed Apr 29, 1999, 2:22 p.m.: 22 IR 2874; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531; filed Mar 18, 2005, 10:45 a.m.: 28 IR 2375; filed Feb 2, 2007, 3:08 p.m.: 20070228-IR-760060032FRA)

SECTION 4. 760 IAC 1-21-4 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-21-4 Retention of deposit during liability

Authority: IC 34-18-5-4

Affected: IC 34-18-4-1; IC 34-18-4-2

Sec. 4. If ~~an ancillary provider, independent ancillary~~ **a health care provider nursing home, or physician** that has established financial responsibility, in the manner set forth in section 3 of this rule:

- (1) ceases practice;
- (2) establishes financial responsibility by means of insurance; or
- (3) decides that he or she no longer wishes to establish financial responsibility under IC 34-18;

any cash or surety bond filed with the commissioner shall remain on deposit until liability ceases to exist. (Department of Insurance; Reg 22, Sec IV; filed Jan 27, 1977, 2:35 p.m.: Rules and Regs. 1978, p. 515; filed Apr 29, 1999, 2:22 p.m.: 22 IR 2874; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531; filed Mar 18, 2005, 10:45 a.m.: 28 IR 2375; filed Feb 2, 2007, 3:08 p.m.: 20070228-IR-760060032FRA)

SECTION 5. 760 IAC 1-21-5 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-21-5 Financial responsibility of hospital or psychiatric hospital

Authority: IC 34-18-5-4

Affected: IC 12-25; IC 16-21-2; IC 34-18-4-1; IC 34-18-5-3

Sec. 5. A hospital **or psychiatric hospital** may establish financial responsibility for itself and its officers, agents, and employees by submitting, to the commissioner, all of the following at least sixty (60) days before the requested effective date of coverage with the PCF:

(1) An agreement in writing, in a form and manner prescribed by the commissioner, to pay any final judgment or agreed settlement arising from claims of malpractice subject to the limits on liability set forth in IC 34-18-4-1(1)(A)(i) and IC 34-18-4-1(1)(A)(ii).

(2) An agreement in writing that the hospital **or psychiatric hospital** will establish and maintain a claims management and risk management program. The program shall include, at a minimum, the following:

(A) Procedures satisfactory to the commissioner for the prompt investigation of each malpractice claim reported to the hospital **or psychiatric hospital** to determine the following:

- (i) Whether malpractice liability exists.
- (ii) Its cause.

(B) Procedures for the following:

- (i) The efficient processing, adjustment, and reasonable settlement of claims.
- (ii) The defense by legal counsel of claims that cannot be adjusted or settled.
- (iii) Examining the cause of losses and taking action to reduce their frequency and severity, including a safety program and employee and professional training program.

The hospital **or psychiatric hospital** may undertake such a claims management and risk management program through its own qualified personnel, or it may undertake part or all of the program through the services of qualified independent contractors.

(3) A verified financial statement that demonstrates the financial resources of the hospital **or psychiatric hospital** are sufficient to satisfy all malpractice claims incurred by it up to the limits on liability set forth in IC 34-18-4-1(3). Notwithstanding, if the hospital **or psychiatric hospital**:

(A) is an agency of any governmental unit; and

(B) desires to use the taxing power of that governmental unit to establish its financial security;

it may establish financial responsibility by filing with the commissioner a copy of an ordinance or resolution of the taxing governing body of the governmental unit, authorizing the hospital **or psychiatric hospital** to do so, and acknowledging the responsibility of the governmental unit for any judgment or settlement arising from claims of malpractice.

(4) An agreement in writing that if the hospital **or psychiatric hospital**:

(A) discontinues operation; or

(B) decides to purchase insurance to establish financial responsibility under IC 34-18 et seq.;

the hospital **or psychiatric hospital** will continue to be liable in the amounts set forth in subdivision (1) until liability ceases to exist.

(5) For each year in which the hospital **or psychiatric hospital** establishes proof of financial responsibility under this section, the hospital **or psychiatric hospital** shall obtain the quotation from IRMIA for the surcharge amount to be paid to the PCF. In support of this calculation, the hospital **or psychiatric hospital** shall submit to IRMIA the following:

(A) The hospital's **or psychiatric hospital's** most recent application for licensure to operate a hospital under IC 16-21-2, **or IC 12-25 for psychiatric hospitals**, on file with the state department of health **or family and social services administration, as applicable**.

(B) Any other information reasonably requested by IRMIA to accurately determine the surcharge amount.

This information shall be submitted to IRMIA at least sixty (60) days before the requested effective date of coverage with the PCF. IRMIA shall retain this information for a period of ten (10) years.

(6) A hospital **or psychiatric hospital** that establishes proof of financial responsibility under this section may obtain only occurrence coverage. Claims made coverage is not available.

(7) The department can reject or refuse to renew a hospital's **or psychiatric hospital's** request to establish financial responsibility under this section if the department determines, after notice and an opportunity to be heard, that the hospital's **or psychiatric hospital's** financial condition is not sufficient or poses a financial risk to the PCF.

(8) The department may require a hospital **or psychiatric hospital** to:

(A) submit to an independent audit; or

(B) provide a certification by an independent person acceptable to the commissioner;

of the surcharge calculations. Any costs related thereto shall be borne by the hospital **or psychiatric hospital**.

(Department of Insurance; Reg 22, Sec V; filed Jan 27, 1977, 2:35 p.m.: Rules and Regs. 1978, p. 515; filed Apr 29, 1999, 2:22 p.m.: 22 IR 2875; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531; filed Mar 18, 2005, 10:45 a.m.: 28 IR 2375; filed Feb 2, 2007, 3:08 p.m.: 20070228-IR-760060032FRA)

SECTION 6. 760 IAC 1-21-8 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-21-8 Payment into patient's compensation fund; annual surcharge for ancillary provider

Authority: IC 34-18-5-4

Affected: IC 27-1-6; IC 27-1-17; IC 27-7-10-14; IC 34-18-5-2; IC 34-18-5-3

Sec. 8. The annual surcharge for an ancillary provider or independent ancillary provider shall be as follows:

(1) An ancillary provider ~~or who is not an~~ independent ancillary provider that purchases insurance as proof of financial responsibility shall pay one hundred ~~ten~~ percent ~~(+10%)~~ **(100%)** of the premium charged by the insurer.

(2) An ancillary provider ~~or who is not an~~ independent ancillary provider that establishes financial responsibility by means other than insurance under section 3 of this rule shall pay an amount equal to one hundred ~~ten~~ percent ~~(+10%)~~ **(100%)** of the premium that would be charged to the ancillary provider by IRMIA. The payment must be made each year under IC 34-18-5-3 within thirty (30) days after qualification.

(3) An independent ancillary provider's surcharge shall be calculated at the following percentage of the published surcharge for a specialty class 1 physician:

(A) Twenty percent (20%) for each dentist.

(B) One hundred thirty percent (130%) for each dentist - oral surgery.

(C) Twelve and one-half percent (12.5%) for each psychologist.

(D) Ninety-two and one-half percent (92.5%) for each podiatrist - no surgery.

(E) One hundred forty-five percent (145%) for each podiatrist - surgery.

(F) Twelve and one-half percent (12.5%) for each optometrist.

(G) Thirty-five percent (35%) for each nurse practitioner.

(H) One hundred fifty percent (150%) for each nurse midwife.

(I) Forty-five percent (45%) for each certified registered nurse anesthetist.

(J) Thirty-five percent (35%) for each physician assistant.

(K) Thirty-five percent (35%) for each clinical nurse specialist.

(4) An independent ancillary provider who provides health care on a part-time basis shall pay a reduced surcharge as follows:

(A) An independent ancillary provider who provides health care twelve (12) hours per week or less on an annual basis shall receive a credit equal to seventy-five percent (75%) of the surcharge amount.

(B) An independent ancillary provider who provides health care more than twelve (12) hours but fewer than twenty-five (25) hours per week on an annual basis shall receive a credit equal to fifty percent (50%) of the surcharge amount.

(C) An independent ancillary provider who provides health care at least twenty-five (25) hours but fewer than thirty-one (31) hours per week on an annual basis shall receive a credit equal to twenty-five percent (25%) of the surcharge amount.

(Department of Insurance; Reg 22, Sec VIII; filed Jan 27, 1977, 2:35 p.m.: Rules and Regs. 1978, p. 516; filed Mar 18, 1986, 10:41 a.m.: 9 IR 2057, eff Apr 18, 1986; filed May 28, 1987, 4:00 p.m.: 10 IR 2298; filed Aug 13, 1991, 4:00 p.m.: 15 IR 7; filed Apr 29, 1999, 2:22 p.m.: 22 IR 2875; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531; filed Mar 18, 2005, 10:45 a.m.: 28 IR 2376; filed Feb 2, 2007, 3:08 p.m.: 20070228-IR-760060032FRA)

SECTION 7. 760 IAC 1-21-8.5 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-21-8.5 Payment into patient's compensation fund; annual surcharge for nursing homes

Authority: IC 34-18-3-7; IC 34-18-5-2; IC 34-18-5-4; IC 34-18-6-6

Affected: IC 27-1-6; IC 27-1-17; IC 27-7-10-14; IC 34-18-5-2; IC 34-18-5-3

Sec. 8.5. A nursing home shall calculate their surcharge rate on a form prescribed by the department. The calculation shall include the following:

(1) The actual number and type of beds licensed by the state department of health.

(2) A per bed charge as follows:

(A) One hundred thirty-six dollars and twenty-eight cents (\$136.28) for each comprehensive nursing care bed.

(B) Sixty-three dollars and ten cents (\$63.10) for each residential nursing care bed.

~~(3) A factor or factors for the existence or absence of a risk management program and other risk related factors.~~

~~(4)~~ **(3) A charge for each employed physician covered by the nursing home.**

SECTION 8. 760 IAC 1-21-10 IS AMENDED TO READ AS FOLLOWS:

760 IAC 1-21-10 Scope of coverage

Authority: IC 34-18-5-4

Affected: IC 16-21-2; IC 34-18-2-14; IC 34-18-2-24.5; IC 34-18-5-2; IC 34-18-5-3; IC 34-18-5-4

Sec. 10. (a) A hospital's **or psychiatric hospital's** coverage with the PCF is limited to facilities identified in the hospital's **or psychiatric hospital's** application for licensure to operate ~~a hospital under IC 16-21-2~~ as facilities operated under the hospital **or psychiatric hospital** license. Each hospital **or psychiatric hospital** shall identify on the surcharge calculation worksheet prescribed by the department all of the:

- (1) facilities operated under the ~~hospital's~~ license; and
- (2) classes of employees intended to be included in the ~~hospital's~~ coverage.

(b) Any health care provider, **including a physician or independent ancillary provider**, that uses an assumed business name must state the assumed business name on the **PCF** certificate of ~~coverage~~ **insurance** filed with the department for the assumed business name to be included in the health care provider's status as a qualified provider as defined by IC 34-18-2-24.5. A health care provider may amend a filing to add a d/b/a. In the event of such an amendment, the health care provider shall remit the greater of the following:

- (1) Additional surcharge if the d/b/a brings any additional risk to the coverage already filed.
- (2) A minimum surcharge payment of one hundred dollars (\$100).

If a proposed complaint has been filed, the d/b/a may only be added if it does not bring any additional risk that was not already considered in its surcharge payment.

(c) ~~Effective March 1, 2008,~~ To become a qualified health care provider each physician and independent ancillary provider shall do the following:

- (1) File individual proof of financial responsibility.
- (2) Pay a surcharge as required by 760 IAC 1-60 or IC 34-18-5, or both.

(d) No ancillary provider may include a physician or independent ancillary provider in its qualification. ~~However, an institution of higher education may include in its qualification dentists and optometrists who are faculty members in its School of Dentistry and School of Optometry, respectively, acting within the scope of their employment as faculty members.~~

(e) **Qualification for individual health care providers may not include employees. Including a d/b/a on a PCF certificate of insurance does not allow an individual to include employees. However, nothing in this subsection shall prevent a corporation, sole proprietorship, partnership, or any other entity organized or registered under state law from including employees in the entity's qualification.**

~~(d)~~ (f) A hospital, **psychiatric hospital** or nursing home may include an employed physician or employed independent ancillary provider in its qualification under the following conditions:

- (1) The hospital, **psychiatric hospital** or nursing home shall pay an appropriate surcharge for each. ~~physician or independent ancillary provider.~~ For a physician the appropriate surcharge is the current rate for the specialty class defined at 760 IAC 1-60.

(2) **For an independent ancillary provider, the appropriate surcharge is encompassed in the calculations contained in the PCF's hospital or nursing home calculation sheet.**

- ~~(2)~~ (3) The ~~individual's~~ **physician's or independent ancillary provider's** qualification status is limited to duties performed within the scope of his or her employment as an employee of the hospital, **psychiatric hospital**, or nursing home.

(g) A hospital, **psychiatric hospital**, or nursing home may include a nonemployed medical director in its qualification under the following conditions:

- (1) The medical director provides no direct patient care as part of the medical director duties.
- (2) The medical director's qualification status is limited to duties performed within the scope of his or her medical directorship.

No additional surcharge is required for a nonemployed medical director who meets the conditions set forth in

subdivisions (1) and (2).

(h) A hospital or psychiatric hospital may include in its qualification a nonemployed resident or fellow under the following conditions:

- (1) The hospital or psychiatric hospital shall pay an appropriate surcharge for each resident or fellow.**
- (2) The resident's or fellow's qualification status is limited to duties performed within the scope of his or her residency or fellowship with the hospital or psychiatric hospital.**
- (3) In the case of a fellow, the fellowship is full time and the fellow engages in no additional medical practice except for part-time moonlighting work.**

(i) An institution of higher education may include in its qualification dentists and optometrists who are faculty members in its school of dentistry and school of optometry, respectively, acting within the scope of their employment as faculty members.

(j) An institution of higher education may include in its qualification a fellow, resident, or student of the institution of higher education pursuing a degree as a health care provider listed in IC 34-18-2-14(1) or as a pharmacist with respect to activities that are associated with the educational requirements of the institution of higher learning.
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